IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 608 of 2006
Date of decision 6 . 8 .2007

Commissioner of Income Tax, Jalandhar .. Appellant

Versus

M/s Lally Motors, GT Road, Jalandhar .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant.

M.M.Kumar, J.

This order shall dispose of six appeals namely ITA Nos. 608 to 613 of 2006. All these appeals emerge from common order dated 14.7.2006 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No. 14 (ASR)/2006 to ITA No.19 (ASR)/ 2006 in respect of assessment years 1999-2000 to 2004-05. Even the assessee in all these appeals is common namely M/s Lally Motors, G.T.Road, Jalandhar. It has been claimed that the following substantive question of law would emerge from the order of the Tribunal:

> " That the Income Tax Appellate Tribunal has erred in upholding the decision of the Commissioner of Income Tax (Appeals) thereby holding that, in the facts and circumstances of the case, it is a case covered by the provision of Section 194 I(a) and not Section 194 I(b) of the Income Tax Act, 1961 ?".

It is undisputed that the assessee had taken on rent the premises at different places and in each case there were two landlords. The rental income received by the co-owner had been duly disclosed in their individual returns for the last several assessment years which has been accepted as

such. It is also not disputed that the individual investment for the respective properties were duly reflected in the hands of individual/ co-owners. The rental income from these properties have never been assessed in the hands of 'AOP'. The contention of the Revenue that the assessee is covered by Section 194 I (b) of the Act for the purposes of deduction of tax at source on the premise that the rent is not paid to an individual or HUF has been rejected by the Commissioner of Income Tax (Appeals), Jalandhar in his order dated 31.10.2005. The afore-mentioned order has been upheld by the Tribunal. It has been found as a fact that the tenancy in the present case was common i.e. congregation of four persons nor any material has been placed on record by the Revenue to show that the rent was paid to conglomeration and thereafter it was distributed among the co-owners. It was in these circumstances that the Tribunal held that the case was covered under Section 194 I(a) of the Act and not by the provisions of Section 194 I (b) of the Act. Therefore, the assessee rightly deducted tax at source @ 15 percent as per the requirement of the afore-mentioned section. In support of the afore-mentioned view the Tribunal has placed reliance on two judgements of the Madhya Pradesh High Court in the case of CIT v. M.P.Agro Morarji Fertilizers Ltd. (1989)176 ITR 282 (MP) and CIT v. Life Insurance Corporation (1987) 166 ITR 191 (M) . The Tribunal has also placed reliance on the judgement of the Bombay High Court in the case of CIT v. Mohindra and Mohindra Ltd. (2000) 242 ITR (st.) 187.

After hearing the learned counsel, we find that the question of law raised by the Revenue is liable to be answered against it as it is obvious that the provisions of Section 194 I (a) of the Act would be attracted and not the provisions of Section 194 I (b) of the Act. Accordingly all these appeals

fail and the same are dismissed.

Photo copy of this order be placed on the file of connected appeals.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

6.8.2007
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